



DARLINGTON BOROUGH COUNCIL TENANCY POLICY 2020 – 2025



Contents	Page
Why a Tenancy Policy	3
The types of tenancy we offer	3
Mutual exchanges and transfers	9
Succession rights and assignments	10

Why a Tenancy Policy

1.0 Introduction

The Localism Act 2011¹ places a duty on local authorities to publish a Tenancy Policy. This Policy sets out:

- The types of tenancies we can grant
- The circumstances in which we will grant tenancies
- The length of tenancies we grant
- When a tenancy ends, the circumstances in which we will grant a further tenancy
- The circumstances where the right to the succession to a tenancy will apply

This policy will be used to ensure that we can provide the most appropriate type of accommodation to meet our tenants' needs and that we make the best use of the Council's housing stock.

1.1 Policy Aims

In setting out the detail of this policy the Council aims to:

- Help those in housing need access a home that meets their needs
- Help to build sustainable and healthy communities
- Help to make decisions about who lives where, in what type of tenancy and for how long

The types of tenancy we offer

2.0 Secure Tenancies

The vast majority of tenancies are let as secure tenancies. They have a range of rights and security of tenure which can only be challenged for specific reasons set out in law. The Council supplies all new tenants with a Tenant's Handbook, which includes a written tenancy agreement explaining the rights and responsibilities they have as a tenant.

The Localism Act 2011 introduced changes to the rights of tenants. Those who became tenants after 1st April 2012 have a limited right to succession and the right to retain their status as a secure tenant no longer applies if they transfer to a property that has been designated for a flexible tenancy.

3.0 Flexible Tenancies

3.1 Introduction

The Council has a stock of around 5,400 properties and in recent years has begun to build new Council housing. Demand for our properties has always been high with properties being let within 22 days on average. The development of new properties has provided an opportunity to challenge perceptions of Council housing and has

¹ Resulting in changes in April 2012 to the Regulatory Standards

opened up a new demand. The Council has therefore committed to build 1,000 new council homes over the next 10 years. The scale of the new development means that the Council needs to consider how new communities are formed as well as supporting existing communities. Accessibility to Council housing therefore forms an important element of achieving balanced sustainable communities. As a consequence, the Council has used its powers under the Localism Act 2011 to introduce flexible tenancies in certain circumstances.

Table 1: Where flexible tenancies apply

Property type	Reason
Properties with adaptations over £7,500	There are a small number of properties where very expensive adaptations costing more than £7,500 have been completed that cannot easily be reversed, such as a “through floor” lift. In total there are approximately 20 within the housing stock, including properties with major extensions.
Properties within a regeneration area	When large scale regeneration is planned and properties become void which are identified for future demolition a short term flexible tenancy will prevent properties standing empty for longer than necessary.

3.2 Details of flexible tenancies

The regulatory guidance² indicates that generally, flexible tenancies should be a minimum of 5 years, although the Localism Act 2011 states that the minimum period that can be offered is 2 years. Anyone being offered a flexible tenancy will be first offered a one year introductory tenancy, followed by a 5 year flexible tenancy. There are exceptions to this (see below).

Flexible tenancies have similar rights to those of secure tenancies. These include:

- The right to undertake a mutual exchange
- The right for a partner to succeed to the tenancy following the death of the tenant
- The right to buy
- The right to repair

² Regulatory Standards Framework: Homes and Communities Agency 2012

- A right to improve their property is at the discretion of the Council. A tenant with a flexible tenancy does not have a statutory right to be compensated for improvements

3.3 Flexible tenancies for shorter periods

The Localism Act 2011 states that the shortest length of time a flexible tenancy can be given is 2 years and then only in exceptional circumstances. The Council will only consider the use of shorter flexible tenancies where:

- There are major changes taking place to the housing stock. It is often difficult to make the best use of the stock that becomes vacant prior to works starting. There may be circumstances where the use of shorter flexible tenancies will help address those particular and exceptional circumstances. The decision will be based on the project delivery plan and will be specific to that particular project.
- If there is a significant change in circumstances, such as the impact of the Welfare Reforms that may increase the risk of certain affected groups not being able to maintain their tenancy.

3.4 Starting a flexible tenancy

All properties offered as a flexible tenancy will be clearly identified as such when the property is advertised and it will be explained in the offer letter. All those being offered a flexible tenancy will be first offered a one year introductory tenancy followed by a 5 year flexible tenancy. The exception to this is those who became a secure tenant after 1st January 2013 as they will not have to enter an introductory tenancy first.

3.5 Reviewing a flexible tenancy

It is a legal requirement that we notify the tenant that the fixed term will be coming to an end at least 6 months prior to the termination of tenancy. However, we will write to the tenant between 9 and 12 months before the end of a tenancy to inform them that we are beginning a review of their tenancy. Our aim will be to give the tenant as much notice as possible about our intentions for their tenancy.

In addition to confirming the start of a review in writing, a home visit will also be arranged to ensure the tenant is aware that their tenancy is due to end and to take the opportunity to discuss their housing needs and future housing options. In the review we will consider:

- Any change in circumstances, such as the size of the family that may be leading to under or over occupation or changes in health
- Any social issues, including children's education
- Any tenancy breaches such as rent arrears, Anti-Social Behaviour complaints and any concerns around property conditions
- Where appropriate, the continuing need for major adaptations
- Where appropriate, if the family are continuing to foster

- The number of applicants on the waiting list in need of that type of accommodation
- The availability of similar properties in that area
- The tenant's views on continuing the tenancy.

Once the review has been completed, we will again write to the tenant as soon as possible but at least 6 months before the end of the tenancy. The letter will explain our decision and set out what will happen next. This will be followed by either a telephone call or a visit depending on the outcome of the review.

Unless there has been a change in circumstances and provided there is no current breach of tenancy, then a further 5 year flexible tenancy will generally be offered, but each case will be looked at on its own individual circumstances.

3.6 Ending a flexible tenancy

Where there has been a significant change in circumstances based on the review criteria set out above, the Council may decide to not offer a further flexible tenancy and terminate the tenancy. The Council will confirm this with the tenant with at least 6 month's notice in writing, followed by a visit as soon as possible after the decision.

The notice will set out:

- Why we have made this decision
- What the appeals process is (see below)
- What advice and support we will provide should alternative accommodation be required.

Where a tenancy is being terminated we will provide advice on alternative housing options including:

- Access to the Housing Options Team
- Support to apply for alternative social housing, including other Council housing
- Advice on privately rented accommodation
- Advice on shared ownership and owner occupation
- Advice on moving house
- Information on other advice and support agencies

A formal notice seeking possession will be served two months before the end of the tenancy.

3.7 Other circumstances where a flexible tenancy may end

The Council may apply for a Court Order at any time during the tenancy to end the tenancy if any of the grounds for possession can be proved. The grounds for possession remain the same as for Secure Tenancies.

If the tenant wishes to bring the tenancy to an end before the end of the fixed term they may do so by issuing a notice of termination that provides 4 weeks notice. For the surrender to take effect it must be accepted in writing by the Council.

3.8 Appeals

The Flexible Tenancies (Review Procedures) Regulations 2012 sets out the procedure for a review of decisions relating to flexible tenancies. There are only two circumstances in which a review can take place:

- A tenant can seek a review of the length of tenancy on offer if it does not comply with the Tenancy Policy.
- They can also apply for a review if, at the end of the flexible tenancy they are refused a further tenancy.

Other concerns to do with the tenancy, such as repairs will be dealt with through the Council's Complaints procedure.

4.0 Introductory Tenancies

All new tenants of the Council, apart from those who are existing tenants of another council or a registered provider, will be given an introductory tenancy.

An introductory tenancy is a trial period lasting 12 months. Introductory tenancies provide an opportunity for new tenants to ensure they understand their rights and obligations under the terms of the tenancy agreement and are able to maintain their tenancy satisfactorily. If there are no problems during the trial period, then the tenancy automatically becomes either a secure or flexible tenancy.

Introductory tenancies do not have all the rights of a secure tenant. They do not have the right to:

- Exchange with another tenant
- Improve the property
- Sublet the property
- Succession
- Buy the property, but the introductory tenancy period will count towards the entitlement period if they choose to buy later.

In some circumstances, the introductory tenancy may be extended by a further 6 months, up to 18 months. This will occur if there are concerns about how the tenancy is being conducted and notice of the intention to increase the introductory period will be given by the 10th month of the tenancy.

Where a tenant has not satisfactorily completed an introductory tenancy, a Notice of Possession Proceedings will be served. The tenant will have a right to review this decision, as set out within the Tenancy Agreement.

The Council may apply for a Court Order at any time during the tenancy to end the tenancy if any of the grounds for possession can be proved.

5.0 Affordable Rents

Affordable rents were introduced as part of the Government's Affordable Rent programme for 2015-2018. Most new build properties developed through the programme were required to be offered on an affordable rent. An affordable rent is calculated on 80% of rents in the private rental market.

Housing providers who had made successful bids for funding through the affordable rents programme also agreed to transfer a proportion of re-lets of existing properties from social rents to higher affordable rents. The intention was to generate extra income that could be used to support new developments.

All new build properties will be offered as affordable rents and therefore are also offered as flexible tenancies.

6.0 The conditions for each type of Council tenancy

Table 2: Types of tenancy

Tenancy Type	Who can be offered	Property Type	Length of Tenancy
Introductory tenancy	Those who are not already a secure tenant with the Council or other registered provider. Will apply to flexible and secure tenancies.	All properties	12 months, with the option to extend to 18 months in certain circumstances
Secure tenancy started before 1 April 2012	Those who were either Council or Registered Providers' secure tenants before 1 st April 2012	All properties	There is no limit on the length of tenancy
Secure tenancy started after 1 April 2012	Those who have successfully completed an introductory tenancy	All properties except where a flexible tenancy applies (see below)	There is no limit on the length of tenancy
Flexible tenancy	Those who have successfully completed an introductory tenancy	Properties with adaptations over £7,500 Properties within regeneration areas	5 years for most properties 2 years in exceptional circumstances

Mutual Exchanges and Transfers

7.0 Mutual Exchanges

The rights of tenants who have flexible tenancies are in most respects the same as those tenants with secure tenancies, including the right to a mutual exchange. However, the process is different. There are also some differences between those who were secure tenants before 1st January 2013 and those who became tenants

after that date.

Where a mutual exchange takes place with someone who was:

- **A secure tenant with a tenancy that started before 1st April 2012:** If a mutual exchange is entered into with someone with a flexible tenancy then both the tenancies have to be terminated and new ones set up. The secure tenant will retain their right to a secure tenancy regardless of the type of property involved. However, as a new tenancy has been started they will have the rights of a secure tenant with a tenancy started after 1st April 2012.
- **A secure tenant with a tenancy that started after 1st April 2012:** If a mutual exchange is entered into with someone with a flexible tenancy then both tenants will simply swap places and both parties will take over each other's property and tenancy. The existing secure tenant must bear this in mind as the tenancy terms will be different under a flexible tenancy.
- **A tenant with a flexible tenancy exchanges to a property that falls into the category of a flexible tenancy:** In these cases, the tenant will be offered a new flexible tenancy. However, the tenancy length will be the remaining period of the exchanged flexible tenancy.
- **A tenant with a flexible tenancy exchanges to a property that does not fall into the category of a flexible tenancy:** In these cases, the tenant will be offered a secure tenancy and they will have the rights of a secure tenant with a tenancy started after 1st April 2012.

An exchange may be refused if:

- The tenant has a Court Order.
- The tenant has legal action pending which may end their tenancy because of rent arrears, breach of tenancy conditions, neighbour nuisance, or damage to the property, or because they have obtained the tenancy by deception or by paying someone to exchange with them.
- The property is unsuitable for the tenant(s) wanting to move to it, or significantly larger than they need.
- The property has been adapted or has conditions attached to the property that the tenant does not meet (such as sheltered housing).

If there are rent arrears which have not yet led to a Court Order or Notice of Seeking Possession then we will usually give conditional approval for the exchange to take place after the arrears have been cleared. In exceptional circumstances we will consider allowing someone with rent arrears to exchange, for example where the arrears are as a direct result of restrictions to Housing Benefit or Universal Credit because of under occupation and the exchange will result in a move to smaller, more affordable accommodation.

If the property conditions are poor we may give approval for the exchange to take place but only after the property conditions have been brought to an acceptable standard as agreed by us.

We may also consider allowing a tenant to exchange in other special circumstances and these will be considered on the facts of each individual case.

7.1 Transfers

Tenants holding a flexible or secure tenancy can apply for a transfer. They will have their priority assessed in the same way as other applicants.

Succession rights and assignment

8.0 Succession

The right to succession is the right to remain in the property as a tenant when the tenant dies. There can legally only be one succession per tenancy.

8.1 Types of succession

The Localism Act 2011 introduced changes to the right to succession. The rights of succession for tenants with tenancies that started before 1st January 2013 will not be affected³.

Table 3: Right of Succession

Tenancies started before 1st April 2012	Tenancies started after 1st April 2012
<ul style="list-style-type: none">• Married couples and registered civil partners automatically succeed providing they are living in the property at the time of the bereavement and there has not been a previous succession.• If there is no spouse or registered civil partner, another family member who has been living with the tenant for at least 12 months may qualify to succeed. However, they may be asked to move if the property is not suitable for their needs. In these circumstances, alternative accommodation will be offered, and they need not move until 6 months after the bereavement.	<ul style="list-style-type: none">• Succession⁴ to a secure or flexible Tenancy entered into after 1st November 2012 only applies to the spouse or civil partner, but also includes a person who was living with the tenant as if they were married or civil partners of the deceased tenant, and there has not been a previous succession.• Another family member who has been living with the tenant cannot succeed to the tenancy on the death of the tenant.

³ Sections 87 and 88 of the 1985 Housing Act

⁴ Section 160 of the Localism Act 2011

<ul style="list-style-type: none">• If a couple are not married or civil partners, then legally the surviving partner has to be treated as a family member, not as a spouse.	
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8.2 Assignment

In some circumstances a tenant may assign their tenancy to another person who complies with certain criteria as laid out in their tenancy agreement. Generally, the right to assign is limited to the same people who can succeed a tenancy.

There are also a limited number of other forms of assignment permitted by statute:

- Mutual exchange (except where a Flexible Tenancy is involved)
- Where a Court has made an order to transfer the tenancy under:
 - Matrimonial Causes Act 1973, Section 24
 - Matrimonial and Family Proceedings Act 1984, Section 17(1)
 - Paragraph 1 of Schedule 1 to the Children Act 1989
 - Part 2 of Schedule 5 or Paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004

The Council has the discretion to decide successions and assignments based on the individual circumstances of each case, taking into account:

- The needs of the applicant
- The property size including any adaptations
- The Council's allocations policies

Commitment to Equalities

This policy has been developed to ensure that we continue to meet the diverse needs and preferences of our tenants.

We will have regard to the needs of all of our tenants to ensure that anyone at risk of disadvantage and discrimination is able to access and benefit from services and facilities fairly.